

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

20860/09001-RCE

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Application Number

10/532,035

Filed

February 2, 2006

First Named Inventor

Clive Alan Brown

Art Unit

2855

Examiner

Michael T. Cygan

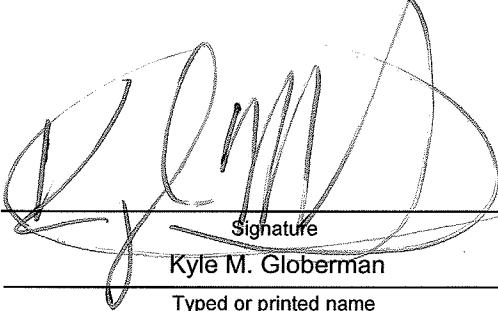
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record. Registration number 46,730

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Registration number if acting under 37 CFR 1.34 _____

August 15, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Clive Alan Brown
Application No.: 10/532,035
Filing Date: October 16, 2003
Title: Test Device for Internal Combustion Engine
Examiner: Michael T. Cygan
Docket No.: 20860/09001-RCE

Pre-Appeal Brief Request for Review

Introduction

Pursuant to the “New Pre-Appeal Brief Conference Pilot Program” established by the United States Patent and Trademark Office, Applicant hereby respectfully requests a pre-appeal conference prior to filing an Appeal Brief for this matter.

Background

Briefly, the present invention is directed to a device for testing the exhaust emissions of an internal combustion engine. The testing device has a base station, a wireless gas sensor and a wireless data input terminal, where each include a wireless real-time data transmitter and receiver. The gas sensor and the display device are detachable from the base station for independent use. Each includes power packs to provide the necessary power when they are remote from the base station.¹

The present invention seeks to provide a testing device that allows the user to be remote from the gas sensor and base station during testing, which reduces user exposure to hazardous fumes since the user can sit in the car during testing while entering data on the remote display device. That is, during testing, there is no physical connection between the base station, the wireless display device or the wireless gas exhaust sensor.²

¹ Application as filed.

² *Id.*

Independent claim1 calls for, among other things,

a base station, a gas sensor, and display device each including a wireless real-time data transmitter and receiver . . . and wherein the gas sensor and display device are detachable from the base station for independent use and each include power packs to provide the necessary power when they are remote from the base station.³

Independent claim 13 calls for, among other things,

a base station, a gas sensor, and a remote hand portable display device each being detachable from the base station for independent use, and wherein the base station, sensor and display device further include at least one of a radio transmitter and receiver.

The Examiner has rejected the independent claims under 35 U.S.C. 102(b) as being anticipated by U.S. Published Patent Application 2002/0004694 (the '694 application).

Analysis

The examiner has failed to make a *prima facie* rejection of the independent claims because the reference cited does not disclose the limitation of a gas sensor and remote hand portable display device each being detachable from the base station for independent use. In the Final Office Action dated March 17, 2008, the Examiner indicated that the '694 application at paragraphs 160, 162, 164 and 174 disclosed certain limitations of the independent claims. As discussed below, this reference fails to disclose certain limitations of the claim.

Paragraph [160] is reproduced in its entirety below:

The data processing device may also perform other functions related to automotive performance evaluation but not associated with the modular vehicle diagnostic system. For example, the data processing device may also interact with other equipment in an automotive repair shop and/or function as a central hub of vehicle diagnosis, sales and inventory.

There is nothing in paragraph [160] that indicates that a wireless gas sensor and a wireless remote hand portable display device are each detachable from the base station for independent use from each other.

Paragraph [162] is reproduced in its entirety below:

In furtherance of this aspect of the present invention, a docking station 60 is provided through which a communications link between a data processing device and selected devices within the modular vehicle diagnostic system may be established. In the presently-preferred embodiment, a docking station is

³ Office Action Response, dated January 11, 2008.

provided for converting data and control information between communication formats implemented by the data processing device and communication formats, discussed below, of other vehicle diagnostic system devices.

Once again, there is nothing in paragraph [162] that indicates that a wireless gas sensor and a wireless remote hand portable display device are each detachable from the base station for independent use from each other.

Paragraph [164] is reproduced in its entirety below:

Docking station 60 may include several ports for the interconnection of various modular devices, including data processor 62, and may include memory and processing devices for converting between different communication formats, such as bit processing formats.

Again, there is nothing in paragraph [164] that indicates that a wireless gas sensor and a wireless remote hand portable display device are each detachable from the base station for independent use from each other. The only information gleaned from the Examiner's citing of this paragraph is that the Examiner in interpreting docking station 60 as applicant's claimed base station, because applicant's base station requires docking ports.

Finally, paragraph [174] is reproduced in its entirety below:

In the preferred embodiment of the present invention, a data processor 62 may be serially linked directly to the user interface unit 48 via a serial data cable 74. The serial link allows the transfer of selected diagnostic data, stored as files within the user interface unit 48, from the user interface unit to the data processor. In the present embodiment, data is transferred in accordance with the modular vehicle diagnostic system serial communications protocol, discussed below. It is preferred that the data processor 62 support the diagnostic functions provided by the other modules, so that diagnostic data may be similarly presented on the user interface unit and the data processor 62 displays.

As with the previous paragraphs, while paragraph [174] indicates that a data processor 62 support diagnostic functions provided by other modules so that diagnostic data may be similarly presented on the user interface unit and the data processor 62 displays, once again there is no disclosure that a wireless gas sensor and a wireless remote hand portable display device are each detachable from the base station for independent use from each other.

Applicant acknowledges that *McLeod* does discuss wireless communication channels. Referring to paragraph [0175] *McLeod* specifically states that "an interconnection, for purposes of the present invention, includes establishing at least one communication channel between a

selected device and at least one other device *within* the modular vehicle diagnostic system. A communication channel may require a solid medium, such as a conductive metal. Data may also be communicated between devices by other modes such as through radio waves or electromagnetic radiation." (Emphasis added) The reference to wireless communication channels is directed to communications between modules within the interface unit and the interface unit itself or between the modular interface unit and the base station. There is, however, no disclosure that the gas sensor and portable hand display should be detachable from the base station so that each can be used independently of the other, and be wirelessly connected to the base station. That is, there is no disclosure that allows the user to place the gas sensor apart from the display device. Instead, the gas sensor module and the display are both part of an interface unit so that together they are mounted in the interface unit. Thus, a long hose connected between the interface unit and the sensor probe is needed. In the claimed invention, there is no connection between the hand portable display device, the gas sensor and the base station since each can wirelessly communicate with each other and be used independent of the other.

Conclusion

Based on the Examiner's above arguments as set forth in the Final Office Action dated March 17, 2008, the Examiner has failed to establish a prima facie rejection under 35 USC 102(b) since disclosure of at least one element of the claim is missing. Applicant requests that the pending rejection be withdrawn and the claims be allowed in their current form.

Respectfully submitted,

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